

APPLICATION FOR INITIATIVE OR REFERENDUM PETITION SERIAL NUMBER


Secretary of State
1700 W. Washington Street, 7th Floor
Phoenix, AZ 85007

The undersigned intends to circulate and file an **INITIATIVE** or a **REFERENDUM** (circle the appropriate word) petition and hereby makes application for the issuance of an official serial number to be printed in the lower right-hand corner of each side of each signature sheet of such petition. Pursuant to Arizona Revised Statutes § 19-111, attached hereto is the full text, in no less than eight point type, of the **MEASURE** or **CONSTITUTIONAL AMENDMENT** (circle appropriate word) intended to be **INITIATED** or **REFERRED** (circle appropriate word) at the next general election.

SUMMARY: A description of no more than one hundred words of the principal provisions of the proposed law, constitutional amendment or measure that will appear in no less than eight point type on the face of each petition signature sheet to be circulated.

The petitioners seek to repeal part of SB 1200 which would eliminate the right to a jury trial for those accused of driving while intoxicated and having an alcohol concentration of .080 or greater within two hours of the time of driving in violation of A.R.S. Secs. 28-1381(A)1 and 28-1381 (A)2 without a prior conviction. The petitioners by referendum seek to reinstate A.R.S. Sec. 28-1381(F) which is consistent with the Arizona Constitution which provides, "At the arraignment, the court shall inform the defendant that the defendant may request a trial by jury and that the request, if made, shall be granted."

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Signature of Applicant
W. Clifford Girard, Jr.
Printed Name of Applicant
335 East Palm Lane
Address
Phoenix, Arizona 85004
City State Zip
(602) 252.7160
Telephone Number

Committee for the Right to Jury Trial, no. R-02-2012

Name of Organization (if any)
335 East Palm Lane
Address
Phoenix, Arizona 85004
City State Zip
(602) 252.7160
Telephone Number
W. Clifford Girard, Jr., Senior Officer
Name of Officer and Title
335 East Palm Lane
Address

Phoenix, Arizona 85004
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(602) 252.7160
Telephone Number
Stephen Barnard, Financial Officer
Name of Officer and Title
945 North Stone
Address
Tucson, Arizona 85705
City State Zip
(520) 884.1744
Telephone Number

Date of Application	May 5, 2011
Signatures Required	86,405
Deadline for Filing	July 19, 2011
Serial Number Issued	R-02-2012 ^{mcb} (2012)
FOR OFFICE USE ONLY	

Revised 11/92

CFID# 2012 00107

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House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 341

SENATE BILL 1200

AN ACT

AMENDING SECTIONS 5-395.01 AND 9-499.07, ARIZONA REVISED STATUTES; AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-251.14; AMENDING SECTIONS 11-445, 11-459, 22-131, 28-1304, 28-1321, 28-1381, 28-1382, 28-1383, 28-1385, 28-1401, 28-1402, 28-1461, 28-1464 AND 28-1465, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-1525; AMENDING SECTIONS 28-2163, 28-3315, 28-3319 AND 31-233, ARIZONA REVISED STATUTES; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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1 is sustained, the affected person may file a petition in the superior court
2 to review the final order of suspension or denial by the department in the
3 same manner provided in section 28-3317. The court shall hear the review of
4 the final order of suspension or denial on an expedited basis.

5 N. If the suspension or determination that there should be a denial of
6 issuance is not sustained, the ruling is not admissible in and has no effect
7 on any administrative, civil or criminal court proceeding.

8 O. If it has been determined under the procedures of this section that
9 a nonresident's privilege to operate a motor vehicle in this state has been
10 suspended, the department shall give information either in writing or by
11 electronic means of the action taken to the motor vehicle administrator of
12 the state of the person's residence and of any state in which the person has
13 a license.

14 P. After completing not less than ninety consecutive days of the
15 period of suspension required by this section and any alcohol or other drug
16 screening that is ordered by the department pursuant to this chapter, a
17 person whose driving privilege is suspended pursuant to this section may
18 apply to the department for a special ignition interlock restricted driver
19 license pursuant to section 28-1401. Unless the certified ignition interlock
20 period is extended by the department pursuant to section 28-1461, a person
21 who is issued a special ignition interlock restricted driver license as
22 provided in this subsection shall maintain a functioning certified ignition
23 interlock device in compliance with this chapter during the remaining period
24 of the suspension prescribed by this section. This subsection does not apply
25 to a person whose driving privilege is suspended for a second or subsequent
26 refusal within a period of eighty-four months ~~or a person who within a period~~
27 ~~of eighty-four months has been convicted of a second or subsequent violation~~
28 ~~of article 3 of this chapter or section 4-244, paragraph 34 or an act in~~
29 ~~another jurisdiction that if committed in this state would be a violation of~~
30 ~~article 3 of this chapter or section 4-244, paragraph 34.~~

31 Sec. 9. Section 28-1381, Arizona Revised Statutes, is amended to read:

32 28-1381. Driving or actual physical control while under the
33 influence; trial by jury; presumptions; admissible
34 evidence; sentencing; classification

35 A. It is unlawful for a person to drive or be in actual physical
36 control of a vehicle in this state under any of the following circumstances:

37 1. While under the influence of intoxicating liquor, any drug, a vapor
38 releasing substance containing a toxic substance or any combination of
39 liquor, drugs or vapor releasing substances if the person is impaired to the
40 slightest degree.

41 2. If the person has an alcohol concentration of 0.08 or more within
42 two hours of driving or being in actual physical control of the vehicle and
43 the alcohol concentration results from alcohol consumed either before or
44 while driving or being in actual physical control of the vehicle.

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1 3. While there is any drug defined in section 13-3401 or its
2 metabolite in the person's body.

3 4. If the vehicle is a commercial motor vehicle that requires a person
4 to obtain a commercial driver license as defined in section 28-3001 and the
5 person has an alcohol concentration of 0.04 or more.

6 B. It is not a defense to a charge of a violation of subsection A,
7 paragraph 1 of this section that the person is or has been entitled to use
8 the drug under the laws of this state.

9 C. A person who is convicted of a violation of this section is guilty
10 of a class 1 misdemeanor.

11 D. A person using a drug, as prescribed by a medical practitioner
12 licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of
13 violating subsection A, paragraph 3 of this section.

14 E. In any prosecution for a violation of this section, the state shall
15 allege, for the purpose of classification and sentencing pursuant to this
16 section, all prior convictions of violating this section, section 28-1382 or
17 section 28-1383 occurring within the past thirty-six months, unless there is
18 an insufficient legal or factual basis to do so.

19 F. At the arraignment, the court shall inform the defendant that IF
20 THE STATE ALLEGES A PRIOR CONVICTION the defendant may request a trial by
21 jury and that the request, if made, shall be granted.

22 G. In a trial, action or proceeding for a violation of this section or
23 section 28-1383 other than a trial, action or proceeding involving driving or
24 being in actual physical control of a commercial vehicle, the defendant's
25 alcohol concentration within two hours of the time of driving or being in
26 actual physical control as shown by analysis of the defendant's blood, breath
27 or other bodily substance gives rise to the following presumptions:

28 1. If there was at that time 0.05 or less alcohol concentration in the
29 defendant's blood, breath or other bodily substance, it may be presumed that
30 the defendant was not under the influence of intoxicating liquor.

31 2. If there was at that time in excess of 0.05 but less than 0.08
32 alcohol concentration in the defendant's blood, breath or other bodily
33 substance, that fact shall not give rise to a presumption that the defendant
34 was or was not under the influence of intoxicating liquor, but that fact may
35 be considered with other competent evidence in determining the guilt or
36 innocence of the defendant.

37 3. If there was at that time 0.08 or more alcohol concentration in the
38 defendant's blood, breath or other bodily substance, it may be presumed that
39 the defendant was under the influence of intoxicating liquor.

40 H. Subsection G of this section does not limit the introduction of any
41 other competent evidence bearing on the question of whether or not the
42 defendant was under the influence of intoxicating liquor.

43 I. A person who is convicted of a violation of this section:

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1 1. Shall be sentenced to serve not less than ten consecutive days in
2 jail and is not eligible for probation or suspension of execution of sentence
3 unless the entire sentence is served.

4 2. Shall pay a fine of not less than two hundred fifty dollars.

5 3. May be ordered by a court to perform community restitution.

6 4. Shall pay an additional assessment of five hundred dollars to be
7 deposited by the state treasurer in the prison construction and operations
8 fund established by section 41-1651. This assessment is not subject to any
9 surcharge. If the conviction occurred in the superior court or a justice
10 court, the court shall transmit the assessed monies to the county treasurer.
11 If the conviction occurred in a municipal court, the court shall transmit the
12 assessed monies to the city treasurer. The city or county treasurer shall
13 transmit the monies received to the state treasurer.

14 5. Shall pay an additional assessment of five hundred dollars to be
15 deposited by the state treasurer in the public safety equipment fund
16 established by section 41-1723. This assessment is not subject to any
17 surcharge. If the conviction occurred in the superior court or a justice
18 court, the court shall transmit the assessed monies to the county treasurer.
19 If the conviction occurred in a municipal court, the court shall transmit the
20 assessed monies to the city treasurer. The city or county treasurer shall
21 transmit the monies received to the state treasurer.

22 6. Shall be required by the department, on report of the conviction,
23 to equip any motor vehicle the person operates with a certified ignition
24 interlock device pursuant to section 28-3319. In addition, the court may
25 order the person to equip any motor vehicle the person operates with a
26 certified ignition interlock device for more than twelve months beginning on
27 the date of reinstatement of the person's driving privilege following a
28 suspension or revocation or on the date of the department's receipt of the
29 report of conviction, whichever occurs later. The person who operates a
30 motor vehicle with a certified ignition interlock device under this paragraph
31 shall comply with article 5 of this chapter.

32 J. Notwithstanding subsection I, paragraph 1 of this section, at the
33 time of sentencing the judge may suspend all but ~~twenty-four consecutive~~
34 ~~hours~~ ONE DAY of the sentence if the person completes a court ordered alcohol
35 or other drug screening, education or treatment program. If the person fails
36 to complete the court ordered alcohol or other drug screening, education or
37 treatment program and has not been placed on probation, the court shall issue
38 an order to show cause to the defendant as to why the remaining jail sentence
39 should not be served.

40 K. If within a period of eighty-four months a person is convicted of a
41 second violation of this section or is convicted of a violation of this
42 section and has previously been convicted of a violation of section 28-1382
43 or 28-1383 or an act in another jurisdiction that if committed in this state
44 would be a violation of this section or section 28-1382 or 28-1383, the
45 person:

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1 1. Shall be sentenced to serve not less than ninety days in jail,
2 thirty days of which shall be served consecutively, and is not eligible for
3 probation or suspension of execution of sentence unless the entire sentence
4 has been served.

5 2. Shall pay a fine of not less than five hundred dollars.

6 3. Shall be ordered by a court to perform at least thirty hours of
7 community restitution.

8 4. Shall have the person's driving privilege revoked for one year.
9 The court shall report the conviction to the department. On receipt of the
10 report, the department shall revoke the person's driving privilege and shall
11 require the person to equip any motor vehicle the person operates with a
12 certified ignition interlock device pursuant to section 28-3319. In
13 addition, the court may order the person to equip any motor vehicle the
14 person operates with a certified ignition interlock device for more than
15 twelve months beginning on the date of reinstatement of the person's driving
16 privilege following a suspension or revocation or on the date of the
17 department's receipt of the report of conviction, whichever occurs later.
18 The person who operates a motor vehicle with a certified ignition interlock
19 device under this paragraph shall comply with article 5 of this chapter.

20 5. Shall pay an additional assessment of one thousand two hundred
21 fifty dollars to be deposited by the state treasurer in the prison
22 construction and operations fund established by section 41-1651. This
23 assessment is not subject to any surcharge. If the conviction occurred in
24 the superior court or a justice court, the court shall transmit the assessed
25 monies to the county treasurer. If the conviction occurred in a municipal
26 court, the court shall transmit the assessed monies to the city treasurer.
27 The city or county treasurer shall transmit the monies received to the state
28 treasurer.

29 6. Shall pay an additional assessment of one thousand two hundred
30 fifty dollars to be deposited by the state treasurer in the public safety
31 equipment fund established by section 41-1723. This assessment is not
32 subject to any surcharge. If the conviction occurred in the superior court
33 or a justice court, the court shall transmit the assessed monies to the
34 county treasurer. If the conviction occurred in a municipal court, the court
35 shall transmit the assessed monies to the city treasurer. The city or county
36 treasurer shall transmit the monies received to the state treasurer.

37 L. Notwithstanding subsection K, paragraph 1 of this section, at the
38 time of sentencing, the judge may suspend all but thirty days of the sentence
39 if the person completes a court ordered alcohol or other drug screening,
40 education or treatment program. If the person fails to complete the court
41 ordered alcohol or other drug screening, education or treatment program and
42 has not been placed on probation, the court shall issue an order to show
43 cause as to why the remaining jail sentence should not be served.

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1 M. In applying the eighty-four month provision of subsection K of this
2 section, the dates of the commission of the offense shall be the determining
3 factor, irrespective of the sequence in which the offenses were committed.

4 N. A second violation for which a conviction occurs as provided in
5 this section shall not include a conviction for an offense arising out of the
6 same series of acts.

7 O. AFTER COMPLETING FORTY-FIVE DAYS OF THE REVOCATION PERIOD
8 PRESCRIBED BY SUBSECTION K OF THIS SECTION, A PERSON WHOSE DRIVING PRIVILEGE
9 IS REVOKED FOR A VIOLATION OF THIS SECTION AND WHO IS SENTENCED PURSUANT TO
10 SUBSECTION K OF THIS SECTION IS ELIGIBLE FOR A SPECIAL IGNITION INTERLOCK
11 RESTRICTED DRIVER LICENSE PURSUANT TO SECTION 28-1401.

12 Sec. 10. Section 28-1382, Arizona Revised Statutes, is amended to
13 read:

14 28-1382. Driving or actual physical control while under the
15 extreme influence of intoxicating liquor; trial by
16 jury; sentencing; classification

17 A. It is unlawful for a person to drive or be in actual physical
18 control of a vehicle in this state if the person has an alcohol concentration
19 as follows within two hours of driving or being in actual physical control of
20 the vehicle and the alcohol concentration results from alcohol consumed
21 either before or while driving or being in actual physical control of the
22 vehicle:

23 1. 0.15 or more but less than 0.20.

24 2. 0.20 or more.

25 B. A person who is convicted of a violation of this section is guilty
26 of driving or being in actual physical control of a vehicle while under the
27 extreme influence of intoxicating liquor.

28 C. At the arraignment, the court shall inform the defendant that the
29 defendant may request a trial by jury and that the request, if made, shall be
30 granted.

31 D. A person who is convicted of a violation of this section:

32 1. Shall be sentenced to serve not less than thirty consecutive days
33 in jail and is not eligible for probation or suspension of execution of
34 sentence unless the entire sentence is served if the person is convicted of a
35 violation of subsection A, paragraph 1 of this section. A person who is
36 convicted of a violation of subsection A, paragraph 2 of this section shall
37 be sentenced to serve not less than forty-five consecutive days in jail and
38 is not eligible for probation or suspension of execution of sentence unless
39 the entire sentence is served.

40 2. Shall pay a fine of not less than two hundred fifty dollars, except
41 that a person who is convicted of a violation of subsection A, paragraph 2 of
42 this section shall pay a fine of not less than five hundred dollars. The
43 fine prescribed in this paragraph and any assessments, restitution and
44 incarceration costs shall be paid before the assessment prescribed in
45 paragraph 3 of this subsection.

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1 3. Shall pay an additional assessment of two hundred fifty dollars. If
2 the conviction occurred in the superior court or a justice court, the court
3 shall transmit the monies received pursuant to this paragraph to the county
4 treasurer. If the conviction occurred in a municipal court, the court shall
5 transmit the monies received pursuant to this paragraph to the city
6 treasurer. The city or county treasurer shall transmit the monies received
7 to the state treasurer. The state treasurer shall deposit the monies
8 received in the driving under the influence abatement fund established by
9 section 28-1304.

10 4. May be ordered by a court to perform community restitution.

11 5. Shall be required by the department, on receipt of the report of
12 conviction, to equip any motor vehicle the person operates with a certified
13 ignition interlock device pursuant to section 28-3319. In addition, the
14 court may order the person to equip any motor vehicle the person operates
15 with a certified ignition interlock device for more than twelve months
16 beginning on the date of reinstatement of the person's driving privilege
17 following a suspension or revocation or on the date of the department's
18 receipt of the report of conviction, whichever occurs later. The person who
19 operates a motor vehicle with a certified ignition interlock device under
20 this paragraph shall comply with article 5 of this chapter.

21 6. Shall pay an additional assessment of one thousand dollars to be
22 deposited by the state treasurer in the prison construction and operations
23 fund established by section 41-1651. This assessment is not subject to any
24 surcharge. If the conviction occurred in the superior court or a justice
25 court, the court shall transmit the assessed monies to the county treasurer.
26 If the conviction occurred in a municipal court, the court shall transmit the
27 assessed monies to the city treasurer. The city or county treasurer shall
28 transmit the monies received to the state treasurer.

29 7. Shall pay an additional assessment of one thousand dollars to be
30 deposited by the state treasurer in the public safety equipment fund
31 established by section 41-1723. This assessment is not subject to any
32 surcharge. If the conviction occurred in the superior court or a justice
33 court, the court shall transmit the assessed monies to the county treasurer.
34 If the conviction occurred in a municipal court, the court shall transmit the
35 assessed monies to the city treasurer. The city or county treasurer shall
36 transmit the monies received to the state treasurer.

37 E. If within a period of eighty-four months a person is convicted of a
38 second violation of this section or is convicted of a violation of this
39 section and has previously been convicted of a violation of section 28-1381
40 or 28-1383 or an act in another jurisdiction that if committed in this state
41 would be a violation of this section or section 28-1381 or 28-1383, the
42 person:

43 1. Shall be sentenced to serve not less than one hundred twenty days
44 in jail, sixty days of which shall be served consecutively, and is not
45 eligible for probation or suspension of execution of sentence unless the

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Passed the House April 18, 2011,

by the following vote: 51 Ayes,

7 Nays, 2 Not Voting

[Signature]
Speaker of the House

Cheryl Laube
Chief Clerk of the House

Passed the Senate February 8, 2011,

by the following vote: 24 Ayes,

5 Nays, 1 Not Voting

[Signature]
President of the Senate

Charmine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

S.B. 1200

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

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SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 19, 2011

by the following vote: 27 Ayes,

3 Nays, 0 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 2011

at 12:00 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 29th day of

[Signature]

at 4:50 o'clock P. M.

[Signature]
Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 29th day of April, 2011

at 7:30 o'clock P. M.

[Signature]
Secretary of State